

✓

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

PageID 1332
With
ORIGINAL
CLERK, DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2015 JUN 16 PM 4:06

JAMES H. WATSON and
Others Similarly Situated,
Plaintiffs,

v.

CITY OF ALLEN, et al.,
Defendants.

CLERK OF COURT

CIVIL ACTION NO. 4:15-cv-00335-A

MOTION TO DISMISS PURSUANT TO RULE 12(b)(1), 12(b)(5), AND 12(b)(6)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendants, the Cities of Amarillo, Balcones Heights, Balch Springs, Baytown, Burleson, Elgin, El Paso, Denton, Diboll, Grand Prairie, Haltom City, Hutto, Irving, Killeen, Longview, Lufkin, Marshall, Mesquite, North Richland Hills, Richland Hills, Round Rock, Southlake, Sugar Land, and Watauga (collectively the “Defendant Cities”) and pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 12(b)(6), respectfully moves the Court to dismiss with prejudice all claims asserted by Plaintiff, James H. Watson (“Watson”) against the Defendant Cities in this action.

1. INTRODUCTION

Defendant Cities are Texas municipalities who have been sued by Watson along with 29 other Texas municipalities, the Texas Attorney General, and three red light camera providers. This action was originally filed in the 153rd District Court of Tarrant County, Texas and was removed by Defendant American Traffic Solutions, Inc. (“ATS”) to this Court. None of the

Defendant Cities were properly served, such service having been attempted in the state court action by certified mail, return receipt requested, addressed to the respective Mayors, none of whom signed the return receipts. This action was brought by Watson, a resident of Louisiana, who received and paid a red light camera civil penalty to Defendant Southlake, without availing himself of his right to an administrative hearing, or making an appeal to the Southlake Municipal Court. The action is being brought as a class action and Watson is requesting monetary damages and temporary and permanent injunctive relief by way of a takings claim and seeks a refund of the amounts paid in civil penalties to all 53 cities based upon the alleged unconstitutionality of several Texas statutes and city ordinances authorizing the civil penalties.

II. LACK OF SUBJECT MATTER JURISDICTION

Defendant Cities move for dismissal under Fed. R. Civ. P. 12(b)(1) because Watson lacks standing as set forth in the Defendants Cities' Brief in Support of Motion to Dismiss.

III. INSUFFICIENT SERVICE OF PROCESS

Defendant Cities move for dismissal based on Fed. R. Civ. P. 12(b)(5) because Defendant Cities were not served with process according to law as set forth in the Defendants Cities' Brief in Support of Motion to Dismiss because the certified mail notices were not signed by the addressee.

IV. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Defendant Cities move for dismissal based on Fed. R. Civ. P. 12(b)(6) because Watson's pleadings do not describe any facts which constitute a cause of action, as set forth in Defendants Cities' Brief in Support of Motion to Dismiss. Watson's claims are based upon a theory that the Texas statutes and city ordinances are unconstitutional because they violate due process standards applicable to criminal cases; however, such statutes and ordinances are constitutional.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant Cities pray that the Court: (1) grant their motion to dismiss; (2) dismiss all claims against the Defendant Cities in this lawsuit with prejudice and order that Plaintiff, Watson, take nothing by this action against the Defendant Cities; and, (3) grant the Defendant Cities such further relief as the Court deems just and proper.

Dated this 16th day of June, 2015.

Respectfully submitted,



GEORGE A. STAPLES
State Bar No. 19058000
Email: gstaples@toase.com
DEAN J. ROGGIA
State Bar No. 24070524
Email: droggia@toase.com
WAYNE K. OLSON
State Bar No. 15276900
Email: wolson@toase.com
TAYLOR, OLSON, ADKINS, SRALLA &
ELAM, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone No. (817) 332-2580
Facsimile No. (817) 332-4740

*ATTORNEYS FOR CITIES OF AMARILLO,
BALCH SPRINGS, BALCONES HEIGHTS,
BAYTOWN, BURLESON, DENTON,
DIBOLL, EL PASO, ELGIN, GRAND
PRAIRIE, HALTOM CITY, HUTTO,
IRVING, KILLEEN, LONGVIEW, LUFKIN,
MARSHALL, MESQUITE, NORTH
RICHLAND HILLS, RICHLAND HILLS,
ROUND ROCK, SOUTHLAKE, SUGAR
LAND AND WATAUGA*

CERTIFICATE OF SERVICE

On June 16, 2015, a true and correct copy of the foregoing document was served upon all counsel, at the addresses on file with the Court and in accordance with the Federal Rules of Civil Procedure, via U.S. First Class Mail:

Russell J. Bowman, Paul R. Smith, Scott A. Stewart, Attorney for Plaintiff
Robert H. Fugate, Attorney for City of Arlington
Richard M. Abernathy, Ross Q. Wells, Ryan D. Pittman, Attorney for City of Frisco
Edwin P. Voss, Jr., Attorney for Cities of Little Elm and Roanoke
Timothy Allen Dunn, Attorney for City of Plano
Amanda Peterson, Andy Taylor, Karen Coomer Denney, Kathleen Weir Bertolatus, Thomas J. Williams, Attorney for American Traffic Solutions, Inc. and American Traffic Solutions, LLC
Lars L. Berg, Matthias Jerome Kleinsasser, Attorney for Xerox State & Local Solutions, Inc.
Stacy Jordan Rodriguez, Attorney for City of Dallas
Peter G. Smith, Vitoria W. Thomas, Attorney for Cities of Allen, Coppell, Duncanville, Farmers Branch, Richardson and University Park
Kurt C. Banowsky, Attorney for City of Garland
Mathew C. G. Boyle, Attorney for Cities of Hurst and Bedford
John Joseph Hightower, Attorney for Cities of Cleveland, Conroe, Humble, Jersey Village, Magnolia, Tomball, and Willis
M. Michael Meyer, Attorney for City of Corpus Christi
Shannon Wade Bangle, Andy Taylor, Karen Coomer Denney, Kathleen Weir Bertolatus, Thomas J. Williams, Attorney for Redflex Traffic Systems, Inc.
Nancy J. Juren, Attorney General of Texas
Jo-Christy Brown, Attorney for City of Bastrop



GEORGE A. STAPLES